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Advancing the rights of Californians with disabilities

July 30, 2007

The Honorable Debra Bowen
Secretary of State
1500 11th Street, 6th Floor
Sacramento, CA 95814

Re: Protection & Advocacy, Inc.'s Comments for the July 30, 2007
Public Hearing On the July 26, 2007 California Top-to-Bottom
Voting Systems Review "Final Accessibility Review Report"

Dear Secretary Bowen:

Protection and Advocacy, Inc. (PAI) is a private non-profit agency established under federal law to advance the human, legal and service rights of Californians with disabilities. Among a number of other statutes, PAI provides services to individuals with disabilities throughout California pursuant to the Help America Vote Act of 2002 (HAVA).¹ PAI works in partnership with people with disabilities, striving towards a society which values all people and supports their rights to, among other things, equal access, dignity, independence, privacy, choice and quality of life.

We have reviewed the July 26, 2007 Accessibility Review Report for California that concludes the Hart, Sequoia, and Diebold electronic voting

¹ 42 U.S.C. §15461-62, PL 107-252. PAI also provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. §10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. §794e, PL 106-402; and the Assistive Technology Act, 29 U.S.C. §3011,3012, PL 105-394.

systems to be non-compliant with the accessibility requirements of HAVA and the 2005 Voluntary Voting System Guidelines. We write to express concern that the report's findings may lead to a decision to decertify all or some of these voting systems – thereby precluding countless Californians with disabilities from exercising their right to an accessible, private, and independent vote.²

The Accessibility Report identifies deficiencies with the reviewed systems and also recommends short term (for near-term 2008 elections)³ and long term mitigation strategies to address the deficiencies. We agree that a short term strategy can mitigate a number of the identified problems.

The report does not, however, also recommend decertification of any or all of the systems as either a short or long term strategy. We agree with this finding as well. Decertification, without an identified and readily accessible replacement system, will result in the disenfranchising of the disability community at a critical time in our nation's history, in violation of federal and state law.

We support you in adopting short term remedial mitigation measures for the near term 2008 elections as an *alternative* to decertification. We urge you to advise County election officials as well as the Hart, Sequoia, and Diebold vendors to implement the measures identified in the report.

For the long term, we urge you to actively seek out, review, and certify new technologies and voting systems that refine and enhance the promise of an accessible, private, and independent vote for Californian's with disabilities.

² See, the Help America Vote Act, 42 U.S.C. § 15481(a)(3) (Section 301); California Elections Code §§ 19225(c)-(f) and 19227(b).

³ Example of short-term mitigation measures discussed in the report include: provision of chairs; replacement of ineffective and sharp privacy panels with privacy curtains; placement of voting machines on tables that meet height and width standards for wheelchair accessibility; improvement of poll worker training to include exposure to people with disabilities; more training to poll workers about how to use the accessibility features; work with grassroots organizations to improve inclusiveness and maintain efficiency; and running of public service announcements that include a description of the accessible voting system at the polling place to improve outreach to voters with disabilities and to prepare them for their experience at the polls.

We look forward to working in collaboration - with you and disability rights advocates - to ensure that the voting needs of people with disabilities are fully understood and addressed.

Cordially,

A handwritten signature in black ink, appearing to be "H Sklar", with a horizontal line extending to the right.

Hillary Sklar
Staff Attorney